BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

Docket No. 2019-290-WS

In Re:	)	
	)	
Application of Blue Granite Water Company for Approval to Adjust Rate Schedules and Increase Rates	)	Petition for Reconsideration and Clarification of Blue Granite Water Company
	)	
	)	

Pursuant to S.C. Code Ann. §§ 1-23-380 and 58-5-330, S.C. Code Ann. Regs. 103-854, and applicable law, Blue Granite Water Company ("Blue Granite" or the "Company") hereby petitions the Public Service Commission of South Carolina ("Commission") to reconsider and clarify certain rulings contained in Order No. 2020-306 ("Order"). The Order was served on the Company on April 9, 2020. The specific rulings that are the subject of this petition are set out below.

I. Introduction

There are a number of legal principles that must guide every Commission determination made in a base rate case such as this one. Several of the most important of these principles are: (1) rates set by the Commission must be just and reasonable[1]; (2) rates set by the Commission must accurately and truly reflect the actual rate base, net operating income, and cost of capital[2]; (3) rates set by the Commission must provide the utility with the opportunity to earn a return on equity that is adequate to attract capital at reasonable terms, sufficient to ensure its financial integrity, and

[1] S.C. Code Ann. § 58-5-210.

[2] *Southern Bell Tel. &Tel. Co. v. Pub. Serv. Comm'n,* 270 S.C. 590, 602-03 (1978).

commensurate with returns on investments in enterprises having corresponding risks[3]; (4) in setting rates, the Commission must balance investor and the consumer interests[4]; (5) the Commission's determinations must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record[5]; and (6) the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith.[6] Commission determinations that violate these principles, that otherwise violate statutory or constitutional provisions, or that are arbitrary and capricious, are subject to reversal on appeal.[7]

The Commission's Order violates the above legal principles in several ways and, if not significantly modified, will produce rates that are unjust, unreasonable, and confiscatory. Substantial rights of the Company are prejudiced by unlawful, arbitrary and capricious rulings by the Commission on certain issues. The specific rulings that are the subject of this petition are set out separately below, in Section II. Accordingly, pursuant to S.C. Code Ann. §§ 1-23-380 and 58-5-330, S.C. Code Ann. Regs. 103-854, and applicable South Carolina and federal law, Blue Granite hereby petitions the Commission to reconsider and modify certain rulings contained in the Order so as to cure the deficiencies identified below.

---

[3] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) ("*Hope*") and *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93 (1923) ("*Bluefield*"). The Commission may not set rates that "depriv[e] investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation." *Southern Bell*, 270 S.C. at 605.

[4] *Southern Bell*, 270 S.C. at 596 (quoting *Hope*, 320 U.S. at 602-03).

[5] The Commission's ratemaking decisions are entitled to deference, and will be affirmed if supported by substantial evidence. *S.C. Energy Users Comm. v. S.C. Public Service Comm'n*, 388 S.C. 486, 490, 697 S.E.2d 587, 589 (2010). "Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." *Porter v. S.C. Public Service Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

[6] *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 286, 422 S.E. 110, 112 (1992). However, according to *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762-63 (2011), "if an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures."

[7] S.C. Code Ann. § 1-23-380(5).

In addition, there are provisions of the Order that require clarification in order for Blue Granite to properly implement them. These provisions are outlined below, in Section III, and Blue Granite requests that the Commission provide sufficient clarification so that Blue Granite may properly implement them.

II. Grounds for Reconsideration and Modification

A. Return on Equity

1. The Order Commits Error by Finding that Blue Granite Requested that its Rates Be Set Using the Operating Margin Method.

In Ordering paragraph 17 the Order states that "…Blue Granite requested [Operating Margin] treatment in its Application." Order, p. 128. That finding or conclusion is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In its Application, Blue Granite clearly requests that its rates be set using "the rate base rate of return methodology." Application at 5 ("Applicant requests rate base treatment in this proceeding."); Direct Testimony of Dante DeStefano at 4, Tr. 763.4 ("The Company proposes that its rates continue to be determined utilizing the rate of return on rate base methodology."). No party opposed the use of the rate base rate of return methodology and there is no evidence in the record supporting a decision by the Commission to set rates based on the operating margin methodology. Blue Granite requests that the Commission reconsider its finding or conclusion that Blue Granite requested the use of the Operating Margin method for setting its rates.

2. The Order Commits Error by Setting Blue Granite's Rates Using a Return on Equity Figure that Is Not Supported by the Record.

The Commission's decision in the Order to set rates using a Return on Equity ("ROE") of 7.46% is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The only evidence in the record on the appropriate ROE was provided by the expert testimony of three witnesses: Dylan D'Ascendis, testifying for Blue Granite; David Parcell,

testifying for the S.C. Office of Regulatory Staff ("ORS"); and Aaron Rothschild, testifying for the Consumer Advocate.[8] With respect to the appropriate cost of equity calculation all three expert witnesses testified that the standard to be used by the Commission in determining the correct ROE for Blue Granite was set by the U.S. Supreme Court in the leading cases of *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1942), and *Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

All three expert witnesses provided their expert opinions as to the appropriate ROE to be used by the Commission that would meet the standards of *Hope* and *Bluefield* in setting rates for Blue Granite. No evidence on that issue was presented other than the testimony of the three experts. While the three experts did not agree on the appropriate ROE to be used to set Blue Granite's rates, none of the experts testified that a 7.46% ROE would meet the requirements of *Hope* and *Bluefield*. More specifically, there was no expert testimony that an ROE of 7.46% would permit Blue Granite to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being earned at the same time and in the same general part of the country on investments in other business undertakings which are attended by similar risks and uncertainties, including non-utility investments. Also, there was no expert testimony that an ROE of 7.46% would be reasonably sufficient to assure confidence in the financial soundness of Blue Granite and would be adequate to maintain and support its credit and enable it to raise the funds necessary for the proper discharge of its public duties. Accordingly, the Commission's decision to set rates for Blue Granite using an ROE of 7.46% is not supported by substantial evidence and is arbitrary and capricious. The Commission's decision to set rates for

[8] York County witness Erik Rekitt also provided brief testimony on return on equity issues, but did not provide any cost of equity analyses and did not recommend a cost of equity for Blue Granite.

Blue Granite using an ROE well below a level supported by the substantial evidence in the record is also an error of law. Setting rates using a 7.46% ROE results in confiscatory rates that fail to meet the constitutional standards described in *Hope* and *Bluefield* and therefore constitutes a taking of Blue Granite's property without due process prohibited by the U.S. Constitution. See *Southern Bell Tel. & Tel. Co., v. Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278 (1978). The Commission should reconsider its decision to set rates using an ROE of 7.46% and issue a revised decision using an ROE supported by substantial evidence.

B. Non-Revenue Water

The Commission's decision to disallow Blue Granite's recovery of non-revenue water levels of greater than 10% is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; is arbitrary and capricious; is characterized by an abuse of discretion or a clearly unwarranted exercise of discretion; and amounts to an unconstitutional taking. Further, no evidence was proffered that overcame the presumption of the reasonableness of the Company's purchased water expenses, particularly as compared to the investment required to mitigate non-revenue water.

While the Commission excerpted testimony in Section V—the Section titled "Review of Evidence and Evidentiary Conclusions"—at pages 44 through 46 of the Order, its actual findings or conclusions addressing non-revenue water, contained in the section that followed, were limited to the following:

> [T]he Commission finds that Blue Granite failed to rebut ORS witness Maurer's testimony that the Company regarding the adjustments [sic] for purchased water deferral account and the ten percent (10%) threshold limitation, and it therefore finds ORS's adjustment just and reasonable to limit the customer's responsibility for non-revenue water expenses to 10% in each subdivision for Blue Granite Service Territories 1 and 2 . . . .

Order at 83-84 (discussing Adjustment Nos. 8a and 8b). It is unclear exactly what the first finding is intended to communicate, except that the Commission believes the Company failed to rebut ORS's testimony in some regard on this issue (despite the plethora of rebuttal evidence the Company provided on this issue). As for the second finding, the Commission appears to find—based on the substance of witness Maurer's testimony—that (a) limiting recovery from customers to no more than 10% of non-revenue water expenses will (b) limit customers' responsibility to no more than 10% of non-revenue water expenses. The first finding is not supported by the evidence in the record and is clearly erroneous, and the second finding is circular and without a rational basis.

1. Blue Granite Provided Ample Evidence Rebutting Witness Maurer's Testimony.

The Commission's first finding on this issue is that "Blue Granite failed to rebut ORS witness Maurer's testimony that the Company regarding the adjustments for purchased water deferral account and the ten percent (10%) threshold limitation…." It is unclear exactly what the Commission intended to communicate with this statement, and the Company seeks clarification as to which portion of Mr. Maurer's testimony to which the Commission refers. Witness Maurer made the following contentions:

- Limiting recovery to 10% non-revenue water insulates the ratepayer from non-revenue water impacts and incentivizes the Company to monitor and mitigate non-revenue water; and
- A 10% non-revenue water threshold is consistent with American Water Works Association's ("AWWA") benchmark for non-revenue water.

Tr. 1201.5. Company Witness Mendenhall did, in fact, rebut these positions, explaining that leak detection and subsequent capital improvements would cost customers more than non-revenue water at a 10% level for the 12 of its 16 systems experiencing more than 10% water loss. Based on the table provided in Company witness Mendenhall's rebuttal testimony, it would cost $232,231

to perform leak detection on those systems, which does not include actual remediation, whereas the cost of non-revenue water noted by Mr. Maurer is $82,998. As explained in the Company's proposed order, the Commission's order would require the Company to make an uneconomic investment, which would actually cost customers more money.

As for witness Maurer's testimony that a 10% non-revenue water threshold is consistent with the AWWA's benchmark for non-revenue water, Company witness Mendenhall explained in his rebuttal testimony that the AWWA no longer supports across-the-board thresholds, and included as an exhibit to his testimony a Committee report supporting that position, which was accepted into evidence as Hearing Exhibit No. 11. As explained in witness Mendenhall's testimony, the AWWA now considers such thresholds to be "arbitrary" and instead recommends benefit-cost analyses such as the one presented by the Company—Tr. 363.4 (quoting AWWA Manual 36 at 15 (4th Ed. 2016))—and none of this rebuttal testimony was challenged by any party in the proceeding.

To address the non-revenue water issue, the Company included a detailed proposal in its proposed order, filed pursuant to S.C. Code Ann. Regs. 103-851. The proposal was subdivision-specific and addressed the tension between insulating customers from non-revenue water expenses and the need for the utility to only make investments that are economic (thereby protecting customers from uneconomic investments). The Company proposed that, for the four subdivisions for which leak testing would be economic for customers, recovery above the Commission's non-revenue water level be disallowed, and the Company begin leak testing and associated repairs and remediation.

Such an approach—detecting and repairing leaks on problematic systems and disallowing recovery of excessive non-revenue water on those systems—strikes a rational and reasonable

balance between incentivizing the utility to invest in its system while not requiring customers to bear investment costs on systems where it is not economical. Instead of this rational, reasonable and balanced approach proposed by the Company, the Commission found that a disallowance based on an across-the-board threshold of 10% would somehow protect customers. It does not. Instead, the Commission's determination forces Blue Granite to either accept the "penalty" of the disallowance or to make an uneconomic investment that will actually drive up costs for its customers. Because the Commission's decision purports to protect customers from the costs of non-revenue water above 10%, while requiring the Company to make an investment that will increase costs above the cost of the water loss, the Commission's decision is clearly erroneous, arbitrary and capricious. To the extent the disallowance is intended as a penalty against the Company, rather than an incentive for the Company to make an investment that demonstrated in the record as uneconomic for customers, the disallowance is characterized by an abuse of discretion and amounts to an unconstitutional taking as it is merely confiscatory. *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989).

2. No Evidence Was Presented by Any Party to Overcome the Company's Presumption of Reasonableness.

The S.C. Supreme Court has concluded that a utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 422 S.E.2d 110, 309 S.C. 282 (1992) (internal citations omitted). Other parties are therefore required to produce evidence that overcomes both this presumption and any evidence the utility has proffered that further substantiates its position. *See Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011).

In this proceeding, no evidence was proffered that overcame the presumption of the reasonableness of the Company's purchased water expenses, particularly as compared to the

investment required to mitigate non-revenue water. While ORS witness Maurer opined that non-revenue water above 10% should be disallowed, "opinion testimony, without an underlying showing of the evidentiary basis on which it relies, is of no probative value." Order No. 2019-341 at 32, Docket No. 2018-318-E (May 21, 2019) (citing *Parker v. S.C. Pub. Serv. Comm'n*, 281 S.C. 215, 217, 314 S.E.2d 597, 599 (1984)). The only evidence proffered on this issue was that (1) the costs of leak detection and remediation would be greater for a majority of Blue Granite's systems than the non-revenue water ORS proposes to disallow, and (2) that the AWWA has rejected as arbitrary ORS's proposed across-the-board disallowance. It is clear that the presumption of reasonableness due to Blue Granite has not been overcome, and that the Commission's determination has no rational or evidence-supported basis.

3. The Commission's Determination Contains No Underlying Rationale.

The Commission's determination regarding the Company's recovery of non-revenue water expenses is arbitrary and capricious because it has no underlying rationale. The Commission's finding was that recovery from customers should be limited to no more than 10% of non-revenue water because customers should not pay for non-revenue water above 10%. Such a "rationale" is tautological and circular, and contains no actual reasoning. For that reason, this finding is arbitrary or capricious, and is characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. Without a well-reasoned finding that the costs of leak detection and remediation are justified by the amount of non-revenue water costs, the Commission's determination is facially arbitrary and capricious and represents an abuse of discretion.

C. Pass-Through Mechanism for Purchased Services

In the Order, the Commission rejected Blue Granite's proposal for a pass-through mechanism for purchased water and wastewater services expenses provided by third parties. The

Commission gives three reasons for rejecting the proposal. First, the Commission claims the proposed mechanism as designed would recover significant annual expenses with little to no review and without adequate customer protections and participation (Order, at p. 123), along with a citation to Blue Granite's view that public participation in the annual rate adjustment process would be "strictly a mathematical exercise" (Order, at p. 54). Second, the Commission contends the proposed mechanism does not incentivize the Company to reduce non-revenue water losses and wastewater inflow and infiltration (Order, at p. 123), along with a citation to Blue Granite's view that the threshold for non-revenue water loss recovery could not be altered in the annual rate adjustment proceedings (Order, at p. 54). And third, the Commission cited Blue Granite's failure to demonstrate that the pass-through mechanism would improve bill clarity for customers, agreeing with the ORS position that because the pass-through costs would be allocated on a consolidated rate basis, customers would be confused. (Order, at pp. 6, 51, 54, 123). Nowhere in the Order does the Commission explain why Blue Granite should be treated differently from other utilities that have pass-through mechanisms in place for the same or similar expenses. The Commission's decision rejecting the proposed pass-through mechanism is not supported by the record evidence and is arbitrary and capricious. Additionally, in the absence of an approved pass-through mechanism, the Commission's failure to allow the Company to defer its purchased water and wastewater service costs with carrying costs is unreasonable and confiscatory.

None of the Commission's rationales for rejecting the proposed pass-through mechanism are supported by the record or sufficient to support such different treatment and rejection of the Company's proposal. It is indeed Blue Granite's view that annual rate adjustments to the pass-through mechanism should be a mostly mathematical exercise not requiring much in the way of

public participation,[9] as that is precisely how the Commission has implemented pass-through mechanisms for all other water and wastewater utilities.[10] However, the Company made clear that it was amenable to both Commission and ORS review and public participation in such reviews.[11] And, as Mr. DeStefano testified, the Company is incentivized to track water loss and I&I because it gives the Company better data as to where costs are being incurred, where to prioritize capital investments, etc. (Transcript, at p. 965.) While it is Blue Granite's view that non-revenue water thresholds should not be re-litigated in annual pass-through mechanism proceedings,[12] if the Commission reasonably believes that a pass-through mechanism for Blue Granite should be implemented differently than such mechanisms are for other utilities – for example, providing for more issues to be litigated or re-litigated in the reconciliation proceedings – and if it can articulate legitimate reasons why Blue Granite's pass-through mechanism should be implemented differently from all other water and wastewater utilities with pass-through mechanisms,[13] it has the authority

[9] Mr. DeStefano's testimony on this issue made clear that "the company's amenable to . . . the public being included in the process and having hearings." Mr. DeStefano also stated that "customers . . . can present whatever evidence is . . . available to them or comments they would like to provide." But, Mr. DeStefano noted that due to the fact that pass-through mechanisms are used to pass through actual costs incurred by the utility from third parties, it should be mostly an auditing and mathematical process, with little room for interpretation: "[a]s long as there's documentation supporting the changes and the calculations tick and tie, the result is the result." Transcript, at pp. 910-11.

[10] *See, for example*, *In Re Application of Kiawah Island Utility, Inc.*, Docket No. 2001-164-W/S, Order No. 2002-285 (PSCSC; Apr. 18, 2002); *In Re Ocean Lakes Utility*, L.P., Docket No. 2013-380-S, Order No. 2014-48 (PSCSC; Jan. 14, 2014); *In Re Application of Utilities Services of South Carolina, Inc.*, Docket No. 2005-217-WS, Order No. 2013-32 (PSCSC; Jan. 16, 2013); *In Re Lisa Lochbaum et al v. Utilities Services of South Carolina, Inc*., Docket Nos. 2009-39-W, 2009-75-W, 2009-101-W, 2009-102-W, Order No. 2010-111 (PSCSC; Sept. 3, 2009); *In Re Application of Kiawah Island Utility, Inc*., Docket No. 2001-164-W/S, Order No. 2006-54 (PSCSC; Jan. 24, 2006); *In Re Dowd Water Systems, Inc*., Docket No. 2003-7-W, Order No. 2003-520 (PSCSC; Aug. 29, 2003).

[11] *See* footnote 8, *supra*.

[12] Mr. DeStefano's testimony on this issue made clear that while the Company's proposal that the non-revenue water threshold established in a base rate case should not be re-litigated in annual pass-through mechanism proceedings, the public and the ORS would be entitled to submit comments on this or other issues in such annual proceedings. Transcript, at pp. 915-22. Of course, the Commission has the authority to modify the Company's proposal on this issue, if it can provide a reasonable basis for its decision to treat Blue Granite differently than other utilities with respect to this issue.

[13] Notably, no other utilities are required to re-litigate water loss thresholds in pass-through proceedings. *See* water utility pass-through cases cited in footnote 9, *supra*.]

to approve a modified pass-through mechanism for Blue Granite. For example, the Company offered that "the Commission could set a water loss threshold for a particular provider, and any water loss beyond that threshold would count against the Company's purchased water and wastewater expense and would not be able to be recovered in the deferral or rate reconciliation process." Tr. at 763.43. Rather than denying Blue Granite the ability to timely recover substantial expenses over which it has little or no control, while at the same time affording other similarly situated utilities the ability to timely recover such expenses, the Commission should fashion a reasonable pass-through mechanism for Blue Granite.

Further, the purported issue of "bill clarity" cited by the Commission is not sufficient to deny the pass-through mechanism. As mentioned above, the basis for this Commission conclusion is the fact that Blue Granite's rates are designed on a consolidated basis – as approved and preferred by this Commission[14] – while pass-through costs are incurred in a more discrete geographical basis from third party suppliers. Accordingly, the pass-through costs cannot be allocated to customers on a dollar for dollar basis corresponding to each customer's geographical causation of the third-party supplier costs. Rather, the pass-through costs will be allocated to all customers whose service is supported by third parties, regardless of their precise geographic location within a consolidated service territory. The Commission's bill clarity rationale relies on a distinction without a meaningful difference. Whether implemented on a consolidated rate basis, or

[14] *See* Order No. 2015-876 at 22-23, Docket No. 2015-199-WS (Dec. 22, 2015) ("We conclude the rate design proposed by the Settlement Agreement is reasonable as this rate design fairly distributes the revenue requirement of the Company among the classes of customers."); Direct Testimony of ORS Witness Matthew Schellinger at 13-14, Docket No. 2017-28-S (Apr. 2, 2018) (A consolidated rate design "result[s] in just, reasonable, sufficient, and nondiscriminatory rates" for all customers.); Testimony of Consumer Advocate Witness Morgan, Tr. 656 ("[I]tit is apparent to me that since 2015 -- since Docket Number 2015-199-WS, the Commission has pursued a consolidated rate structure policy when setting rates for the company."); Testimony of Consumer Advocate Witness Morgan, Tr. 692 ("[U]nder a consolidated rate structure, you're not going to isolate one service area to -- to pass through water rated -- a purchased water increase, because you're – it's one system, one rate.").

on a more granular geographical basis, the utility's third-party actual purchased water and wastewater service costs will be allocated to and recovered from customers, no more and no less, in accordance with the utility's approved rate structure.[15] Moreover, there is no evidence, only ORS argument, that customers will be confused by a line item on their bills showing their allocated third-party supplier costs, computed on a consolidated rate basis. Nor is there evidence (or even argument) that any imagined customer confusion outweighs the many benefits of a pass-through mechanism such as that proposed by Blue Granite. These benefits include the timely recovery of significant expenses; periodic adjustments to reflect changes in these expenses, both increase and decreases; providing for more gradual increases in rates between rate cases, mitigating "rate shocks" resulting from large base rate increases; providing more accurate price signals to customers; supporting the utility's ability to finance needed investments on reasonable terms; and potentially deferring the need for future base rate cases. (Transcript, at pp. 763.31-32.)

The Commission's decision treats Blue Granite differently from other utilities with pass-through mechanisms, without reasonable justification or explanation as to why Blue Granite should be treated differently. The Commission has approved pass-through mechanisms for purchased water and wastewater service cost for several other utilities. For example, the Commission has approved pass-through mechanisms for Kiawah Island Utility, Ocean Lakes Utility, Utilities Services of South Carolina and Dowd Water Systems.[16] Agency action is arbitrary

[15] Notably, this same purported lack of bill clarity is present in other approved rate adjustment mechanisms that allocate actual incurred costs of providing service to customers. For example, electric utilities pass-through their energy efficiency program costs in a similar manner as that proposed by Blue Granite in this case for its purchased water and wastewater service costs. Yet the Commission has approved energy efficiency pass-through mechanisms, without even mentioning the issue of bill clarity. *See* Order No. 2010-472, Docket No. 2009-261-E (July 15, 2010; Order No. 2013-826, Docket No. 2013-208-E (Nov. 26, 2013); Order No. 2013-889, Docket No. 2013-298-E (Dec. 20, 2013); Order No. 2015-596, Docket No. 2015-163-E (Aug. 19, 2015).

[16] See orders cited in footnote 10, *supra*.

and capricious if the agency offers insufficient reasons for treating similar situations differently, or if the agency consistently follows a contrary practice in similar circumstances and provides no reasonable explanation for the change in practice. *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184, 332 S.E.2d 539, 541 (S.C. Ct. App. 1985)(A decision is deemed arbitrary under this section if it is "without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards."); *see also*, *ANR Pipeline Co. v. FERC*, 315 U.S. App. D.C. 189, 71 F.3d 897, 901 (D.C. Cir. 1995)("it is textbook administrative law that an agency must provide a reasoned explanation for departing from precedent or treating similar situations differently.") In this case, the Commission has failed to justify its different treatment of Blue Granite with respect to the proposed pass-through mechanism.

Finally, while the Commission permits the continuation of deferral accounts in order to track and recover, in the next rate case, increases in purchased water and wastewater services expenses, it does not permit the accrual of carrying costs on the deferred amounts. The Commission's reasoning for this decision is unclear and unsupported; it merely states that "Blue Granite is not authorized to apply carrying costs to these deferral accounts other than as approved and directed herein." Order at p. 55. By denying approval of the pass-through mechanism and also disallowing carrying costs for deferred cost increases, the Company will be required to shoulder these costs indefinitely without any return to compensate it for the time value of its money. Such a position arbitrarily and unconstitutionally denies the utility complete recovery of its prudently incurred costs necessary to provide service to customers.

Expenses deferred for recovery require upfront cash from the utility, which must be obtained from the utility's debt and equity investors. Those investors require interest, or a return,

on the cash they have invested in the utility. These financing costs (the return on the deferred costs) are a real cost that the utility incurs, and to disallow recovery of these costs during the deferral period or the amortization period effectively disallows prudently incurred costs. Such a disallowance is confiscatory and, where it is imposed without any reasoning as in the Order, it is arbitrary, without a rational basis, and not supported by the record.

In sum, the Company's proposed pass-through mechanism is a reasonable method of allowing for the timely recovery of significant expenses incurred to provide adequate and reliable service to customers – expenses which are largely outside the Company's control. The Commission has approved similar pass-through mechanisms for other water and wastewater utilities for the same types of expenses. And the Commission has approved similar pass-through mechanisms for electric utilities for third-party expenses. The Commission's Order gives no reason for departing from its past practice and treating Blue Granite differently. Moreover, the procedural reasons cited by the Commission in the Order for rejecting the proposal are insufficient and unpersuasive – and even if they were reasonable, the Commission could have and should have approved a modified version of the proposed pass-through mechanism, in order to give Blue Granite the same opportunity other utilities have to recovery such third party expenses on a timely basis. The Commission's reliance on the bill clarity issue is likewise unpersuasive, in light of Blue Granite's consolidated rate structure and the many other rate design objectives fulfilled by the proposed rate adjustment mechanism. The Commission's decision on this issue is arbitrary and capricious and should be reconsidered and modified by approving a pass-through mechanism for Blue Granite. Should the Commission decline to grant reconsideration of its denial of the proposed pass-through mechanism, the law requires the Commission to grant the accrual and recovery of carrying costs.

D. Deferred Maintenance Expenses

The Commission's treatment of the Company's unamortized balance for deferred maintenance violates the Company's right to recovery of the prudently incurred expenses of providing service to its customers. Pursuant to the principles established in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co*., 320 U.S. 591 (1944), the Company has a constitutional right to a reasonable opportunity to recover its prudently incurred costs of providing service. In this proceeding, the deferred costs for hydrotank inspections were both prudently incurred and used and useful, and there was no evidence in the record to the contrary. Yet, the Commission's decision to refuse to allow the Company to recover any return on substantial portions of its deferrals will prevent the Company from recovering its prudently incurred expenses in a manner that is required by the constitution.

The Commission has not made any finding that the expenses were imprudent, or otherwise not used and useful. Moreover, the evidence conclusively established that such maintenance costs are significant, do not recur on an annual basis, and provide a multi-year benefit, the costs of which the Company is funding upfront. As such, the unamortized balance of the deferred maintenance should be given rate base treatment. By refusing to allow the Company to recover any return on a substantial portion of the deferred balances, the Order offends the constitution as it denies the Company the appropriate return on prudently incurred expenses. The Commission should reconsider its decision to refuse to allow the recovery of a return on the full amount of the deferred balances.

E. Storm Recovery Expense

The Commission's reasoning supporting its decision to normalize storm recovery expenses based on a 10-year level rather than the most recent 5-year period consisted solely of the following:

> There is disagreement between the parties regarding this adjustment. The Commission finds that this adjustment is just and reasonable and adopts the same.

Order at 86 (discussing Adjustment No. 9d). Without any supporting reasoning, the Commission's determination is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; is arbitrary and capricious; is characterized by an abuse of discretion or a clearly unwarranted exercise of discretion; and amounts to an unconstitutional taking as it is merely confiscatory. *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989); *Daufuskie Island Util. Co. v. S.C. Office of Regulatory Staff*, 427 S.C. 458, 464 (S.C. 2019) ("A decision by the commission is arbitrary 'if it is without a rational basis, is based ... not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.'") (quoting *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985)).

F. Greenville Upfit Costs and Rent Expense

In the Order, the Commission disallowed $495,206 in upfit costs for the Company's new Greenville headquarters office. The basis for this disallowance, according to the Order, is the Commission's conclusion that the Company's decision to sell its office building in West Columbia, and relocate to Greenville, was unreasonable. More specifically, the Order concludes that the decision to relocate was "due to legacy brand issues which were caused by the Company itself" while the Company had previously committed to rebrand Carolina Water Service as Blue Granite at no cost to customers. (Order, at p. 57.) Further, the Commission found that "[t]he evidence in the record supports the finding by the Commission that the Greenville move and its

resulting rent and upfit costs are directly and casually [sic] related to Blue Granite rebranding itself, and that the Company's customers should not have to pay the costs associated with Blue Granite continuing its rebranding process." *Id.*

The Commission's decision to disallow the Greenville upfit costs is arbitrary and capricious, and it ignores both substantial evidence of record and the presumption that a utility's expenses are made in good faith and are reasonable.[17] The Company represented in Docket No. 2018-365-WS that the name change will have no impact on the Company's service or rates – a representation that remains accurate. The costs associated with the name change (new logo design, new signage, new uniforms, new truck decals, etc.) have been removed from the Company's revenue requirements. The decision to relocate the Company's headquarters office is a separate and distinct matter that has nothing to do with the name change and rebranding. Instead, the only evidence in the record on this issue is that the relocation was driven by the Company's need to attract and retain talented employees. Tr. 355.6.

The evidence demonstrates that the decision to relocate Blue Granite's headquarters office resulted from the fact that its West Columbia office was located in an industrial park, with no restaurants or other amenities nearby; these facts translated to an adverse impact on Blue Granite's ability to attract and retain high quality employees. (Tr. at p. 355.4.) Once a decision to relocate the office was made – for valid management reasons – both upfit and rent expenses were going to be incurred, *wherever* the ultimate location of the relocated headquarters office ended up. (*Id*.) After deciding that relocation was the right decision, for purposes of attracting and retaining high quality employees, Blue Granite then studied various options, and decided upon Greenville, for

[17] The Order erroneously stated that "[t]he adjustments to gross plant in-service are not disputed." Order at 111. The Company has disputed and continues to dispute the disallowance of its headquarters office costs, which is a component of Gross Plant In-Service.

several reasons. (Tr. at p. 355.6-7.) Those reasons included the labor force, projected population growth, and the balance between labor supply and labor affordability in Greenville -- and the concomitant ability to attract and retain employees – as well as the "legacy brand issues" cited by the Commission in the Order. (*Id*.) This relocation decision was reasonable, as it was made in order to support the attraction and retention of high quality employees. Moreover, the decision where to relocate a company's headquarters is uniquely a management, not a Commission, decision.[18] Most important for purposes of this case, *there is no evidence whatsoever that the decision to relocate in Greenville as opposed to relocating in Columbia or some other city resulted in unreasonable costs*. In fact, the evidence shows that the Greenville upfit costs actually incurred by Blue Granite were eminently reasonable. (Tr. at p. 355.5.)

The Commission also disallowed $84,839 in rent expense relating to the Greenville office,[19] concluding that such disallowance was "just and reasonable." (Order, at p. 58.) The Commission fails to provide a rationale for its conclusion (and fails to fully document its conclusion). This disallowance is also flawed, for several reasons. First, the record shows that the costs associated with the old West Columbia headquarters office (sold in 2018) had been removed from rate base in Blue Granite's last rate case, and were not included in rate base in this case either. (Transcript, at p. 1151.) Consequently, without this rent expense, there will be no allowance in

[18] As this Commission has previously recognized, the Commission has no authority to manage the utility and make management decisions, and its determination to the contrary in the Order is arbitrary and capricious. See Order No. 2005-42 at 31, Docket No. 2004-212-S (Feb. 2, 2005) ("While this Commission's decisions are often based on the prudence or imprudence of management decisions, those decisions involve a review of the management decisions, and this Commission has no authority to manage the utility."); Order No. 2019-323 at 56, Docket No. 2018-319-E (May 21, 2019) ("No party has alleged that the 'rank and file' employees are overpaid, and how the Company decided to compensate its employees is a managerial decision, which is the sole responsibility of the Company. How to pay employees is a managerial decision, and as long as the costs and results are reasonable this Commission has no basis to reject the compensation at issue.").

[19] As discussed *infra*, this dollar amount is incorrect as it reflects an annualized amount of all the Company's leases, not just the lease for the Greenville office.

rates whatsoever for Blue Granite's headquarters office. Second, there is no evidence whatsoever that this rent expense is unreasonable or imprudent. Lastly, the record reflects that this rent expense was actually incurred, and the utility is entitled to a presumption that its expenses are reasonable and incurred in good faith. The Commission's Order is arbitrary and capricious because it ignores these presumptions, is based on no evidence whatsoever, and fails to even document its conclusion.

In sum, the evidence demonstrates that Blue Granite made a reasonable, management decision to relocate its headquarters, given the industrial park location of its office. This management decision was made for a valid purpose – to improve its ability to attract and retain high quality employees. Once that management decision was made, there were necessarily going to be costs incurred associated with renting new office space and upfitting the new office with furniture, equipment, etc., regardless of the location of the new office. Although the Greenville location was chosen, in part, due to the relative difficulty in attracting employees in the West Columbia area due to "legacy brand issues," the evidence clearly supports that the decision was made primarily because Greenville offered better near and long-term work force potential. The evidence also demonstrates that the actual upfit costs incurred were quite reasonable. Additionally, the Commission's decision unreasonably conflates the costs of re-branding (new signage, new logos, etc.) with the Company's use of the phrase "legacy brand issues" to describe one aspect of its reasoning for choosing Greenville over West Columbia for its relocated headquarters. Finally, the Commission's decision to disallow both the upfit and the rent expenses, combined with the fact that the old West Columbia headquarters costs were removed from rates in a previous rate case and not included in this case either, results in zero costs being included in rates for the costs of a headquarters office. The Commission should reconsider and modify its decisions to allow recovery through rates of both the Greenville office upfit costs and the Greenville rent expense.

G. Rate Case Expense and Other Legal Expenses

1. The Order Commits Error in the Decision to Disallow Recovery of Legal Expenses from Docket Nos. 2018-358-WS and 2018-361-S.

In the Order, at p. 101, the Commission makes the finding that Blue Granite should not be allowed to recover its legal expenses associated with Docket 2018-358-WS in which Blue Granite sought approval of an Annual Rate Adjustment Mechanism ("ARAM") and Docket 2018-361-S in which Blue Granite sought changes to Interceptor Tank Charges ("ITC"). The Order denies recovery of those expenses based on a finding that they are duplicative.[20] The two dockets in question were pending immediately prior to the filing of the Blue Granite rate case application and the issues pending in the two dockets were addressed in this proceeding. Blue Granite requested withdrawal without prejudice of the two petitions on July 17, 2019 and filed its notice of intent for the current proceeding on August 30, 2019.

In its application and exhibits Blue Granite sought recovery of $36,864 legal expenses from the two dockets as test year expenses. The ORS accepted the amount of the expenses but proposed that they be reclassified as rate case expenses and amortized over three years. *See* Sullivan Direct Testimony, p. 12. In its rebuttal testimony Blue Granite accepted the ORS proposal to reclassify the ARAM and ITC legal expenses as rate case expenses and requested similar treatment for $16,131 in additional legal expenses from the two dockets. *See* DeStefano Rebuttal Testimony, pp. 30-31. ORS examined and accepted the additional legal expenses and included those expenses in its ultimate rate case expense adjustment. *See* Sullivan Surrebuttal Testimony, p. 2.[21] When questioned by the Commission as to these expenses, the ORS affirmed its finding that these costs

[20] The Order actually uses the word "duplicitous" to describe the expenses. In this Petition, Blue Granite assumes that "duplicative" was intended.

[21] The Order did not exclude the $16,131. To the extent that the failure to exclude that amount was a clerical or scrivener's error and the Commission clarifies its intent to exclude recovery of those fees, Blue Granite includes such amount it its request for reconsideration.

were prudently incurred and appropriately included as rate case expenses: "ORS determined that they were prudently incurred expenses, and that's why we've included them in our adjustment." Tr. 1147.

The Commission's finding that the legal expenses from Dockets 2018-358-WS and 2018-361-S were duplicative is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. No party opposed recovery of the legal expenses and no party made any suggestion—or proffered any evidence—supporting a conclusion that the expenses were duplicative of any other expenses. ORS was a party to the ARAM and ITC dockets and was in a position to know if the legal expenses from the two dockets were duplicative of any other expenses. Instead of making any such contention, ORS proposed, and the Company accepted, that the ARAM and ITC legal expenses be recovered as rate case expenses instead of test year legal expenses. That modification resulted in the expense being amortized over three years instead of being recovered in base rates, a substantial savings to customers. Instead of accepting the reasonable compromise reached by the parties, the Order makes a finding that the expenses are duplicative. This finding lacks support in the record, is arbitrary and capricious, and constitutes clear error.

The finding in the Order that the ARAM and ITC legal expenses were duplicative is affected by an error of law because the Commission failed to provide Blue Granite any opportunity to respond to the issue of whether those legal expenses were duplicative. In *Utilities Service of South Carolina, Inc. v. South Carolina Office of Regulatory Staff,* 392 S.C. 96, 708 S.E.2d 755 (2011), the South Carolina Supreme Court held that it was error of law for the Commission to fail to give a utility "…a meaningful opportunity to rebut the evidence presented in opposition to its proposed rates." *Utilities Services, supra*, p.107. In this case Blue Granite had no opportunity whatsoever to address the question of whether its ARAM and ITC legal expenses were duplicative.

Accordingly, the Commission's finding was a clear error of law and the Commission should reconsider its ruling.

2. The Order Commits Error in Failing to Allow Recovery of Deferred Legal Expenses for Proceedings in the Administrative Law Courts.

In its Directive issued on March 25, 2020 ("March 25th Directive") and in Exhibit 1 of the Order, the Commission excluded recovery of deferred legal expenses relating to two proceedings in the Administrative Law Court: the DHEC Permit Denial and the I-20 Interconnection (jointly "ALC Proceedings").[22] Legal expenses from the ALC Proceedings had been deferred by Blue Granite pursuant to Commission Order No. 2018-182. DeStefano Direct Testimony, p. 9. In this proceeding Blue Granite proposed the amortization of $216,773 (DHEC Permit Denial) and $65,948 (I-20 Interconnection) over five years. ORS agreed with the Blue Granite proposal. Briseno Direct, pp. 6-7. Ex. ARB 1.

In the March 25th Directive the Commission provided this rationale for its decision to exclude any recovery for the ALC Proceeding expenses:

> I move that the Commission remove and deny recovery of the Administrative Law Court legal expenses for the DHEC Permit Denial ($43,355) and I-20 Interconnection ($13,190) on the grounds that the Company should have sought recovery of legal expenses related to the condemnation proceedings as provided by law to the prevailing party. This amounts to remove from proforma adjustments total $56,545.

No party to this proceeding presented any evidence to support the Commission's apparent conclusion that Blue Granite could have recovered its expenses from the ALC Proceedings in the condemnation proceedings. No witness offered any such testimony. Blue Granite had no opportunity to rebut or address the contention that "it should have sought recovery of legal

[22] At page 85 of the Order the Commission appears to accept ORS's Adjustment 9(c) in which ORS accepted and supported amortization of the expenses from the ALC Proceedings. However, based on the ruling in the March 25th Directive and the figures in Exhibit 1 to the Order Blue Granite assumes that the Commission intended to exclude any recovery of the ALC Proceeding Expenses.

expenses in the condemnation proceedings…", and the decision therefore violates the Company's due process rights because the Company was not on notice as to this treatment and has had no opportunity to be heard or introduce evidence related to it. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

The Commission's decision to disallow any recovery of legal expenses from the ALC proceedings is flawed in the same way as its decision regarding recovery of the ARAM and ITC legal expenses discussed above. The decision on the ALC Proceedings' expenses is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. There is no evidence in the record to support it. In addition, the decision fails again to comply with the Supreme Court's guidance in the *Utilities Services* case that it is error of law to refuse to allow a utility a meaningful opportunity to respond to the evidence presented in opposition to its proposed rates. In addition to these clear errors of law, the Commission apparently failed to review or consider the provisions of the South Carolina Eminent Domain Act, S.C. Code Ann. §§28-2-10 *et seq*. which defines potentially recoverable "litigation expenses" as legal expenses incurred in the condemnation proceeding and which would not allow recovery of legal expenses in related but separate administrative proceedings. Further, inasmuch as the Commission's decision was "without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards," such decision is arbitrary and capricious. *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184, 332 S.E.2d 539, 541 (S.C Ct. App. 1985).

The Commission's treatment of the ALC Proceedings' legal expenses is without evidentiary support and based on fundamental errors of law. The Commission should reconsider

its decision on this issue and allow recovery as proposed by Blue Granite and supported by the ORS.

H. Purchased Water and Sewer Expense

The Order's treatment of Blue Granite's purchased water and sewer expenses is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and will result in rates that are arbitrary, capricious and confiscatory. The pro-forma adjustment to the Test Year of $3,178,824 per ORS is comprised of two parts — ORS Adjustments 8a and 8b, from witness Sullivan's Revised Surrebuttal, Exhibit DFS-5, page 2 of 14. Adjustment 8a relates to the annual amortization of the accumulated purchased water and sewer deferral balance of $2,563,596, proposed to be amortized over 3 years, or $854,532. Adjustment 8b accounts for the annualization of ongoing purchased water and sewer expenses, adjusting the Test Year actuals by $2,324,292, and incorporating ORS's proposed 10% non-revenue water threshold. The Commission erred by apparently presuming the entire $3,178,824 pro-forma adjustment reflected the full accumulated deferral balance, and the Commission then retained only 1/5th of that amount in expense by authorizing a 5-year term on the deferral's amortization (as opposed to ORS's and Blue Granite's year proposals). To remedy this error, should it retain a 5-year amortization period and a 10% non-revenue water threshold,[23] the Commission should modify the Order to reflect $512,719 annually in rates for a 5-year amortization of the deferred balance, while also including $2,324,292 annually in rates to reflect the ongoing level of purchased water and sewer expenses, for a resulting pro-forma adjustment of $2,837,011.

[23] Note that Blue Granite maintains, as discussed previously in this petition for reconsideration, that the recovery of the deferral balance should also include carrying costs at Blue Granite's weighted average cost of capital. These numbers do not reflect such carrying costs. The Company additionally maintains, as discussed previously in this petition for reconsideration, that the use of a 10% non-revenue water threshold is erroneous, arbitrary and capricious.

Pursuant to the principles established in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co*., 320 U.S. 591 (1944), the Company has a constitutional right to a reasonable opportunity to recover its prudently incurred costs of providing service. The Order's treatment of Blue Granite's expenses for purchased water and sewer services does not allow a reasonable opportunity to recover its costs of providing service and is therefore violative of Blue Granite's rights secured under the due process provisions of the South Carolina and U.S. Constitutions. Further, the Commission's "amortization" of these ongoing expenses over a 5-year period is not supported by the evidence in the record, is arbitrary and capricious, and was not proposed or supported by any party in this proceeding and therefore violates the Company's due process rights because the Company was not on notice as to this treatment and has had no opportunity to be heard or introduce evidence related to it. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

I. Round Up Program and Associated Costs

The Commission's Order determined that it is just and reasonable to approve the Company's proposal to implement the Round Up Program, as modified by the ORS. However, the Commission denied the Company's request to recover the costs associated with the Round Up Program. This unjust result is not in accordance with South Carolina law and should be reconsidered in order that the Round Up Program may be implemented.

The record in this proceeding supported the proposition that the Round Up Program, even as a voluntary program, is part of the Company's service offering. The record included evidence that the assistance to lower income customers should result in lower customer service expenses

due to fewer disconnections/reconnections, as well as lower uncollectible expenses, which will benefit all customers. Further, the Round Up Program has costs associated with its implementation. While the costs may be difficult to quantify, the administrative and communication expenses of implementing the Round Up Program are real and reasonable costs to serve its customers, which should be recoverable from customers. The Company, in its rebuttal testimony, had even adopted a position of encouraging the Commission to follow the Consumer Advocate's reasonable position in placing a cap on the deferral of costs relating to the billing and customer service systems to accommodate the Round Up Program, and scrutinizing the deferred costs in the Company's next base rate case. Instead, the Commission denied all costs outright, finding that the Company or its shareholders should pay for these costs of providing this service to its customers.

The Commission should reconsider its Order on this issue. Without assurance of cost recovery, the Company does not intend to implement the Round Up program.

J. Tax Cuts and Jobs Act Credit

The Company seeks reconsideration of the Commission's order to issue the one-time credit resulting from the Tax Cuts and Jobs Act "within [the Company's] next billing cycle following the date of this Order." Order at 134. Blue Granite instead requests that it be permitted to provide the one-time credit coincidental to the implementation date of the Company's new rates beginning September 1, 2020.

In light of the COVID-19 pandemic, as a courtesy to its customers, the Company offered, and the Commission accepted—at page 133 of the Order—to delay the implementation of new rates until September 1, 2020. Blue Granite's offer encompassed delaying the implementation of *all* components of its rates, including depreciation rates and other revenue requirement

components, the rates billed to customers, and the issuance of the one-time Tax Cuts and Jobs Act credit. In addition to the cash flow issues that such a significant rate implementation delay presents, the Order grants less than 43 percent of Blue Granite's investment in its system and services for customers. It would be financially imprudent for the Company to implement this one component of the rate case in the next billing cycle, while delaying the necessary increase in revenues until September 1, 2020. Finally, the Company notes that the immediate nature of the issuance of the credit is not supported by the record or by any underlying reasoning in the Commission's order ("Blue Granite is to issue these credits to customers as soon as possible and within its next billing cycle following the date of this Order." Order at 64, 135).

K. Calculation Errors

There are several pure calculation errors in the Order, which the Commission should correct in its order on reconsideration. These errors are inconsistent with the evidence of record. If these errors are allowed to stand, the Order will not be supported by evidence, will be arbitrary and capricious, and will result in unreasonable and/or confiscatory rates. The errors are described below.

1. Rent Expense

The pro-forma adjustment to the Test Year of $84,839 per ORS includes annualization of *all* Company leases, not just inclusion of the Greenville Office lease to the Test Year actuals. The Test Year included several months of the Greenville Office lease, as well as other leases, all of which were annualized in this adjustment. Per ORS witness Sullivan's direct testimony at page 13, the Greenville Office rent expense was included in pro-forma expenses at an annualized amount

of $73,665. Therefore, to remove only the Greenville Office lease expenses from rates,[24] the Commission should remove $73,665, not the $84,839, leaving $11,174 in rates for expenses related to the other Company leases.

2. Rate Case Expense

ORS's position in Adjustment 16a in its proposed order included rate case expenses related to Dockets 2018-358-WS and 2018-361-S. These values were identified as $36,864 (Sullivan Surrebuttal, Exhibit DFS-5, Adjustment 21c) and $16,132 (DeStefano Rebuttal Exhibit No. 2, accepted in Sullivan Revised Surrebuttal page 2). However, the Commission only removed the $36,864 portion of ORS's adjustment in their Exhibit 1.

3. Deferred Charges

The Commission included 4/5ths of the ORS pro-forma adjustment for Purchased Sewer and Water Expense (combined Adjustments 8a and 8b), or $2,543,059, as rate base in the Deferred Charges line item. If the Commission intended to include the unamortized balance of the purchased sewer and water deferral in rate base, the correct amount from ORS's position is 4/5ths of the $2,563,596 accumulated balance, aligning with ORS Adjustment 8a.[25]

III. Requests for Clarification

There are several statements or directives in the Order for which the Company seeks clarification.

[24] Blue Granite maintains, as explained previously in this petition for reconsideration, that the Greenville office rent expenses should be included in its revenue requirement, that the ORS' exclusion of 1.5 employees, should be rejected, and that a portion of the Charlotte, NC rent should properly be allocated to Blue Granite.

[25] Notwithstanding this correction, Blue Granite maintains its opposition to the Commission's disallowance of non-revenue water amounts of greater than 10%, included within ORS Adjustment 8a.

A. Bill Format

Ordering Paragraph 18 of the Order states that "Blue Granite will provide the Commission an update on information provided in its bill format on or before July 1, 2020." (Order, at p. 136.) This is the only mention of such a bill format update in the Order, and it is not at all clear to Blue Granite what the Commission is directing in this Ordering Paragraph. Accordingly, Blue Granite requests that the Commission clarify what, if anything, is required with respect to a bill format update.

B. Recovery of Purchased Water and Sewer Treatment Charges

On page 51 of the Order, the Commission states the following:

> If the Commission determines the Company should recover its purchased water and sewer treatment charges more quickly than a general rate proceeding, [sic]

The Company requests clarification from the Commission as to under what circumstances and how the Commission envisions it recovering its purchased water and sewer treatment charges more quickly than through general rate proceedings.

C. Customer Complaint Reporting

Blue Granite also seeks clarification that, as part of its ongoing (now quarterly) customer complaint reporting, it should not file customer addresses with the Commission. Providing customer addresses to the Commission, in combination with customer names, would require that the Company make—and the Commission rule on—quarterly requests for confidential treatment. To ease this regulatory burden, the Company proposes to file the quarterly reports without customer addresses, and to instead provide addresses to ORS on an as-needed basis.

D. Capital Improvement Reporting

Blue Granite also seeks clarification as related to reports on capital improvements. The Order directs the Company to "provide the written reports on capital improvements no less than

semiannually as described above to ORS and filed with the Commission." Order at 136 (emphasis added). However, these written reports were not described in the Order, and therefore clarification is necessary. The Company notes that Order No. 2018-345(A) in Docket No. 2017-292-WS required the Company to file semiannual capital improvement reports. The Company is willing to continue filing these reports (in the instant docket) should the Commission direct same.

IV. Conclusion

The Commission should reconsider Order No. 2020-306 to address and remedy the unlawful rulings described in this petition. In addition, the Commission should clarify certain provisions of its Order No. 2020-306 as requested in this petition. Pursuant to S.C. Code Ann. §58-5-330, Blue Granite requests that the Commission grant this petition, vacate order No. 2020-306 and issue a new order consistent with the arguments and requests for clarification set out in this petition.

Respectfully submitted,

s/Samuel J. Wellborn
Frank R. Ellerbe, III
Samuel J. Wellborn
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Columbia, SC 29201
Telephone: (803) 231-7829
fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Applicant Blue Granite Water Company

Columbia, South Carolina
April 29, 2020